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NLRB RE-RUN ELECTIONS: A STUDY

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A stated policy of the 1935 Wagner Act[1] as re-enacted in the Taft-Hartley and Landrum-Griffin amendments is to protect the workers' right to "full freedom of association, self-organization, and designation of representatives of their own choosing." The National Labor Relations Board is charged with the effectuation of this policy and does so by directing "an election by secret ballot" whenever a question of representation is appropriately presented.[2]

In the fifteen years since the Taft-Hartley Amendments, the Labor Board has been requested to hold some 135,000 such elections. In these elections the employees vote for or against the union or unions on the ballot; but the campaigning sometimes takes the form of voting for or against the company.[3] In this contest, interest and emotions run high. Over 90 per cent of the eligible voters cast ballots,[4] sometimes in a gantlet of diverse, unfair, and corrupt electioneering practice—bribery, physical coercion, fraudulent marked ballots, threats and promises.[5]

The Labor Board, charged with the responsibility to protect "full freedom of association," cannot accept the results of a tarnished election.

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[1] 29 U.S.C. § 151, 49 Stat. 449 (1958).

[2] A question of representation is appropriately presented when the petitioner supplies evidence of representation, *i.e.* evidence that at least 30% of the employees want representation by the petitioner. Section 101.18 of the NLRB Rules and Regulations, series 8, as amended September 14, 1959. Most unions present more than a 30% showing of interest, and some, such as the Textile Workers Union, have instructed field representatives to secure at least 60% showing of interest before requesting an election.

[3] The employer has the advantage in this contest. Long ago Judge Learned Hand pointed out that employer communication has a dual aspect: "On the one hand, it is an expression of his own beliefs and an attempt to persuade his employees to accept them; on the other, it is an indication of his feelings which his hearers may believe will take a form inimical to those of them whom he does not succeed in convincing." NLRB v. American Tube Bending Co., 134 F.2d 993, 994 (2d Cir.), *cert. denied,* 320 U.S. 768 (1943).

[4] In 1961, 89.4% of the eligible voters participated in the NLRB elections. 26 NLRB Ann. Rep. 231.

[5] The types and prevalence of various unfair electioneering practices are discussed in, THE NATURE OF THE ILLEGAL PRACTICE, *infra.*

> A Board election is not identical with a political election. In the latter, public officials conducting the election have no responsibility beyond the mechanics of the election . . . By way of contrast . . . our function is to conduct elections in which the employees have the opportunity to cast their ballots for or against a labor organization in an atmosphere conducive to the sober and informed exercise of the franchise, free not only from interference, restraint, or coercion violative of the Act, but also from other elements which prevent or impede a reasoned choice.[6]

The Labor Board seeks to ascertain the desires of employees regarding union representation under "laboratory conditions as nearly ideal as possible."[7] When the standard of electioneering falls too low, the results are set aside and a re-run election is ordered.

The case of *James Lees & Sons*[8] presented such a situation. There, the Textile Workers Union sought to represent the workers at the Glasgow, Virginia plant. The city leaders feared that the company might leave the community should the workers "go union," and that other companies might hesitate to establish branch plants in a "union" atmosphere. Consequently, the city newspaper warned in front page editorials that "If the Union Comes—Lees Goes." A city councilman told employees that the plant would close if the union won the election. The bank deferred loan applications and some merchants deferred installment sales until the election—a not too subtle reminder that the employees should vote "right." On March 16, 1960 the employees rejected the union by a vote of 1,674 to 316. The Labor Board set aside the results of this election because of the community pressure, and ordered a re-run election. In March of 1961, a year later, the second election was held and the union was again rejected, this time by a vote of 1193 to 765.

[6] Sewell Mfg. Co., 138 NLRB No. 12, at 5 (1962). In this case the Labor Board set aside the results of an election because of the employer's deliberate, sustained, and cumulative use of an emotional appeal against the union based on racial prejudice. In the campaigning preceding the subsequent re-run election, the employer distributed copies of the Labor Board opinion, which condensed all the inflammatory remarks made during the original campaign. The Labor Board has set aside the results of the re-run election for this reason. 140 NLRB No. 24 (1962).

[7] General Shoe Corp., 77 NLRB 124 (1948) (a landmark decision in this area of the law).

[8] 130 NLRB 290 (1961).

The *R.D. Cole Mfg. Co.*[9] case was somewhat analogous. There, the employees rejected the Boilermakers Union by a margin of 133 to 31. The Labor Board set aside the results of this election because of an employer election-eve speech in which he told a "captive audience" of his employees that the results of a union victory would mean the loss of important customer business. In the ensuing re-run election the union again lost, this time by a vote of 127 to 31.

These and similar publicized decisions raise several questions. How many and what proportion of Labor Board elections are tainted by unfair electioneering practices? How many defeated parties take advantage of a re-run election, and is this remedy effective, *i.e.* how often do the results of the re-run election differ from the results of the original election? Is there a significant difference in results depending upon the nature of the unfair electioneering practice, the type or size of the voting unit, the time lapse between the two elections, the margin of defeat in the original election, or the geographic area involved? In addition to setting aside elections tainted by unfair electioneering practices, is there any other remedy the Labor Board can or should adopt to prevent these practices?

The discussion in the following pages seeks to provide an answer to some of the questions. The information is based on a study of the 20,153 elections conducted under Labor Board supervision in fiscal year 1960, fiscal year 1961, and in the first nine months of fiscal year 1962. Information on all these cases is not readily available, and appropriate notation is made in those situations when conclusions are based on a partial sampling.

Some Over-All Observations

Over 90 per cent of all Labor Board elections are conducted without any suggestion of "taint." In only nine per cent of the elections (1,876 of the 20,153) were objections filed, and in only 315 cases were the objections held to be meritorious. This is 17 per cent of the cases wherein objections are filed, and only one per cent of the total number of elections. In short, when talking about meritorious charges of unfair electioneering practices, we are talking about an infrequent situation. Although of minor proportions in

[9] 133 NLRB 1455 (1961).

over-all context, the specific situation cannot be ignored if "full freedom" of self-organization is to have meaningful significance.

When the Labor Board sets aside the results of an election because of unfair electioneering practices and orders a re-run election, the re-run election is usually held. To be specific, in the period covering almost three years, the Labor Board set aside 315 election results, and re-runs were held in 267 (85 per cent) of these cases.[10]

In almost a third of the re-run elections, the results differed from those in the original election. In the period covering almost three years, 267 re-run elections were held, and in 84 (31 per cent) of them, the tide turned in favor of the participant which originally lost and filed the protest.

Employer misconduct was the cause for 212 (82 per cent) of the re-run elections, and here the objecting union won 30 per cent of such re-run elections, picking up an average of slightly over 20 per cent of the total votes cast. Union misconduct was the cause of setting aside the results of the original election in 55 (18 per cent) of the situations, and here the company won in 36 per cent of the re-run elections,[11] picking up an average vote of 20 per cent. Counting all re-run elections, there was an over-all two per cent increase in pro-union vote.[12]

The above statistics, for each of the years in question, are set forth below in tabular form.[13]

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[10] There is no information concerning the other 15%. The parties might have reached agreement without an election, or the union which lost might have abandoned the contest either because of long delay at the Labor Board or because of a feeling that no sufficient time had elapsed to dissipate the harmful consequences of the unfair electioneering practices. The author of this report has personal knowledge of cases in all three of the above categories.

[11] In summary, 200 of the 267 re-run elections presented a situation where one union was on the ballot and it protested management misconduct. The union won 58 (29%) of these re-run elections. Thirty-two of the re-run elections were "one union" elections where management protested conduct by the victorious union, and the union was defeated in 15 (47%) of the re-runs. Twenty-three of the re-run elections were "multi-union" elections where the petitioning union had won by improper techniques. The union won a second time in 19 (83%) of the re-run elections. Finally, 12 "multi-union" elections were set aside at the protest of the petitioning union, and it won 7 (58 percent) of the re-run elections.

[12] The union position improved in 50%, declined in 43%, and remained constant in 7% of the re-run elections.

[13] Here, and throughout this report, all percentages are rounded out to the closest whole number.

	1960	1961	1962	Total
Number of elections held.	6,633	6,610	6,910	20,153
Number of elections in which objections filed (per cent of total number of elections).	593 (8%)	659 (9%)	626 (9%)	1,878 (9%)
Number of elections set aside because of unfair electioneering practices (per cent of cases where objections filed).	95 (16%)	123 (19%)	97 (15)%	315 (17%)
Number of re-run elections held (per cent of cases where original results set aside).	86 (91%)	96 (78%)	85 (88%)	267 (85%)
Number of cases where results of two elections differed (percentage).	24 (26%)	35 (36%)	25 (29%)	84 (31%))

Geographical Considerations

Unfair electioneering practices are not a regional matter. Each of the National Labor Relations Board's 28 regional offices witnesses its fair share of the total. Indeed, the regional offices with the large volume of business seem to have the largest number of unfair electioneering practice cases: Chicago, 23; New York, 21; Boston, 17; Los Angeles, 14; New Orleans, 14; Atlanta, 13; Seattle, 12; San Francisco, 11; Cleveland, 10; and so on. Conversely, the regions with the smaller amount of business have fewer unfair electioneering re-run elections: Winston-Salem, 2; Santurce, 4; Fort Worth, 5; Buffalo, 5; and so on up the ladder.

The only surprising item (possibly due to the small samples) is the large difference among the regions in the percentage of re-run elections where the results differ from those in the original elections. Contrast the percentage of changed results in Seattle (6 out of 12 or 50 per cent), in Minneapolis (5 out of 11 or 40 per cent), and in Atlanta (6 out of 13 or 40 per cent) with the percentage of change in Los Angeles (1 out of 14 or .07 per cent) and in Boston (3 out of 16 or 11 per cent).

The Nature of the Illegal Practice

The files of 107 re-run election cases are available at the Labor Board's Washington office,[14] and disclose a total of 159 unfair

[14] The 107 cases covered in this phase of the study involve "Board" directed elections. There is no reason to believe that the 160 "regional directors" directed elections differ in the nature of the post-election issues involved, although there is some difference in the percentage of changed results in the re-run elections.

electioneering practices, each of which singly would justify setting aside the results of the original election. In 30 of these 107 situations, the complained of party committed more than one unfair electioneering practice.[15] Most commonly (17 such situations), an illegal technique such as captive audience speeches within twenty-four hours of the election, of personal interviews in the manager's office is coupled with a threat of economic reprisal for a union vote. The second most common situation of multiple unfair electioneering practices (13 such situations) is the coupling of an economic threat with a promise of economic benefit if the union is defeated.

In one situation the employer pulled out all the stops and, (a) threatened to discharge the employees if they voted for the union, (b) gave an unscheduled wage increase on election-eve, (c) misrepresented material facts concerning the union, and (d) enlarged his labor force prior to the election with persons he thought were anti-union.[16] In another similar situation the employer, (a) threatened to discharge "disloyal" employees, (b) threatened to close his plant if the union won, (c) questioned employees about union sentiment in his office, (d) visited the employees in their homes where he urged an anti-union vote, and (e) granted an unprecedent wage increase on election-eve.[17]

The more frequent types of unfair electioneering practices disclosed by this survey are: (1) threats to close or move the plant if the union is elected (21 such cases); (2) captive audience speeches within twenty-four hours of the election, generally coupled with unfair threats or promises (18 such cases); (3) promises of wage increases or other benefits if the union is defeated (18 such cases); (4) technical defects in the election (17 such cases); and (5) personal interviews with the employees in the manager's office, generally coupled with unfair threats or promises (16 such cases).

The categories of unfair electioneering practices, the frequency of such offenses, and the results in the re-run elections, are set forth in the following chart.

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[15] The results of the re-run elections in this group of 30 multi-unfair electioneering practice cases closely approximates the results of the re-run elections in the total group of 107 cases—a 43% difference in results between the original and re-run elections.

[16] In this particular situation, the union lost initially by a vote of 33 to 32, and won the re-run election by a vote of 32 to 27.

[17] Here the union lost originally by a vote of 46 to 36, and lost the re-run election by a vote of 51 to 18.

RE-RUN ELECTIONS BY NATURE OF OFFENCE

Nature of electioneering offense.	Number of such electioneering offenses and percentage of total offenses.	Number and percentage of re-run elections where results differed from those in original election.
Threat to close plant if union is elected.	21 (13%)	6 (29%)
Threat to discharge employees if they vote for union.	16 (10%)	6 (37%)
Threat to eliminate benefits or to refuse to deal with union if elected.	12 (6%)	9 (75%)
Speech to captive audience on company premises within 24 hours of election.	18 (11%)	8 (45%)
Interrogation and interviews by supervisors in locus of authority.	16 (10%)	7 (44%)
Home interviews with employees.	2 (1%)	0 (0%)
Unexpected wage increase shortly before election.	8 (5%)	4 (50%)
Promise of wage increase or other benefit if union is defeated.	18 (11%)	6 (33%)
Misrepresentation of material facts or inflamatory, emotion-packed defamation.	10 (6%)	6 (60%)
Preferential treatment to one of two competing unions.	8 (5%)	3 (33%)
Physical intimidation.	3 (2%)	0 (0%)
Unprecedented gifts or bribes.	6 (4%)	3 (50%)
Surveillance of union activities.	3 (2%)	1 (33%)
Hiring new employees who are thought to be anti-union.	1 (1%)	1(100%)
Technical defects, *i.e.* marked ballots, campaigning too close to ballot box, etc.	17 (11%)	3 (10%)
Total	159	63 (40%)

Each of the above categories of unfair electioneering practices is set forth above for each tells its own story to the experienced eye. Thus, an employer threat to close his plant if the employees vote for a union is not only the single most practiced unfair electioneering device, but it is also the most effective device for the permanent defeat of a union (in only 29 per cent of the re-run elections do the results differ from those in the original election). On the other

hand an employer threat to refuse to recognize a union even if one is elected (6 per cent of all unfair electioneering practices fall within the category) is a "taint" to the election process which can be and is remedied by holding a re-run election (the results of 75 per cent of the re-run elections differed from the results of the set-aside original elections). However, the sample group in each of the above described categories is small. Should the categories be combined into logical larger categories, the following appears.

1. Threats of economic reprisal. Forty-nine (31 per cent) of the 159 unfair electioneering practices consist of various kinds of threats (plant closing, job elimination, reduction of benefits, refusal to deal with a union). In 20 (43 per cent) of the subsequent re-run elections, the results differed from those in the original election

2. Promises of Economic benefit. Twenty-six (16 per cent) of the 159 unfair practices consist of promises or inducements (pay increases on the eve of the election, and promises of pay increases, steadier work, overtime, etc. should the employees reject the union). The results in 10 (38 per cent) of the 26 re-run elections differed from those in the original elections.

3. Improper techniques of communication. Thirty-six (23 per cent) of the 159 unfair practices consist of improper and coercive techniques of communication (captive audience speeches within twenty-four hours of election, personal interviews in the office, home visits, etc.) The results in 15 (42 per cent) of these 36 re-run elections differed from the original results.

4. Coercion. A small percentage of the unfair practices (7 per cent) were coercive in nature (physical violence and threats thereof, bribes and unprecedented gifts, open surveillance of union hall attendance, etc.). The results in 33 per cent of the re-run elections differed from the results in the original elections.

5. Technical defects. Seventeen (9 per cent) of the unfair practices were technical (display of "marked" ballots, campaigning too close to ballot, assertions that one party had the go-ahead from the federal government, the presence of a Labor Board official in the company office hobnobbing with company officials or driving a company-owned car). The results in three (10 per cent) of these 17 re-run elections differed from the results of the original elections.

The percentage of changed results (10 per cent) of re-run

elections when the results of the original elections are set aside because of technical violation gives little support to the Board's premise that a fair and reasoned decision is not possible under such circumstances, but the requirement of a re-run election here finds additional support in the "Caesaf's wife" approach sought by the Labor Board in its public functions.

THE TYPE OF UNION AND THE NATURE OF THE VOTING UNIT INVOLVED

The files of the 107 re-run election cases available at the Labor Board's Washington office[18] strongly indicate that the nature of the participating union, *i.e.* craft, semi-industrial, or industrial and the nature of the voting unit, *i.e.* white collar, blue collar or production and maintenance, have a bearing on the outcome of re-run elections. In brief, when a semi-industrial union loses an election in a unit of blue-collar employees due to employer unfair electioneering practices, there is a fifty-fifty chance that the union will win the re-run election; but when an industrial union loses an election among a unit of production and maintenance employees due to the same type of employer unfair electioneering practices, there is only one chance out of three that it will win the re-run election. This greater elasticity of voting patterns in blue-collar employees works both ways. When a semi-industrial union wins an election in a unit of blue-collar employees due to its own unfair electioneering practices, the odds are three to one that the union will lose the re-run election; however when an industrial union wins an election among a unit of production and maintenance employees due to its unfair electioneering practices, the odds are reversed, three to one that the union will win again on the re-run election.

The two charts below show that semi-industrial unions are far more apt to win re-run elections than are industrial unions; and that blue-collar workers are far more apt to change their votes on the re-run election than are industrial employees. The correlation between the two charts is not perfect since often a craft union, such as the Carpenters, seeks to organize a unit of production and maintenance employees; and an industrial union seeks to organize a unit of white-collar clerical employees.

[18] See note 14 *supra.*

RE-RUN ELECTIONS BY TYPE OF UNION

Type of Union.	Number of elections in which type of union participated (% of total number of elections).	Number and per cent of re-run elections where results differed from original election results.
Craft	30 (29%)	9 (30%)
Semi-industrial	22 (21%)	10 (45%)
Industrial	55 (51%)	20 (36%)
Total	107	39 (36%)

RE-RUN ELECTIONS BY NATURE OF UNIT

Nature of Unit.	Number of election in which this nature of unit was involved (% of total number of elections).	Number and per cent of re-run elections where results differed from original election results.
White collar	9 (8%)	4 (44%)
Blue collar	29 (27%)	16 (55%)
Production and maintenance	69 (64%)	19 (28%)
Total	107	39 (36%)

It would be error however to put undue emphasis on the type of union and nature of the voting unit involved in the election processes. To illustrate: production and maintenance voting units generally are larger than voting units of blue-collar employees, and the size of the voting unit also has a bearing on the outcome of re-run elections.

THE SIZE OF THE VOTING UNIT

There is a strong correlation between the size of the election unit and the probability of changed result in a re-run election.[19] As illustrated by the following chart, the smaller the unit, the greater the probability of changed result: a 65 per cent change when the unit is smaller than ten; a 32 per cent change when the unit is between 10 and 20 employees; a 23 per cent change when the unit is between 20 and 50 employees; and at the other end of the spectrum, a 17 per cent change when the unit is between 200 and 400 persons, and only a one per cent change when the unit exceeds 400 employees.

[19] Similarly, unions win more original elections when the voting unit is small. A study of election results in 1960 in which the five most active

SIZE OF VOTING UNIT

Size of Unit.	Number and per cent of re-run elections involving units of this size.	Number and per cent of re-run elections where results differed from those in original election.
1-9	20 (7%)	13 (65%)
10-19	44 (16%)	14 (32%)
20-29	25 (9%)	6 (24%)
30-39	22 (8%)	6 (27%)
40-49	19 (7%)	3 (15%)
50-59	19 (7%)	5 (26%)
60-69	9 (3%)	3 (33%)
70-79	12 (4%)	7 (58%)
80-89	13 (5%)	9 (69%)
90-99	5 (2%)	2 (40%)
100-149	25 (9%)	6 (24%)
150-199	15 (6%)	5 (33%)
200-299	12 (4%)	2 (17%)
300-399	11 (4%)	2 (18%)
400-499	5 (2%)	0 (0%)
over 500	11 (4%)	1 (9%)
Total	267	84 (31%)

AFL-CIO unions (The International Assoc. of Machinists, the United Steelworkers, the Retail Clerks, the International Brotherhood of Electrical Workers, and the Meat Cutters) participated in six typical labor board regions (Boston, Pittsburgh, Atlanta, Kansas City, San Francisco, and Los Angeles) reflects a strong correlation between size of union and election victories:

UNION ELECTION RESULTS AND SIZE OF VOTING UNIT

Size of unit	Number and percentage of elections within bracket	Number and percentage of union wins within bracket
1-19	157 (41%)	93 (62%)
20-59	113 (30%)	57 (50%)
60-99	52 (14%)	25 (48%)
100-499	49 (13%)	15 (31%)
over 500	7 (2%)	2 (28%)
Total	378	192 (51%)

To summarize in larger categories, there is a different result in 42 per cent of the re-run elections when the voting unit numbers fewer than twenty employees; in 23 per cent of the re-run elections when the voting unit numbers between twenty and fifty employees; in 49 per cent of the re-run elections when the voting unit numbers between fifty and one hundred employees; in 24 per cent of the re-run elections when the voting unit numbers between one and four hundred employees; and in one per cent of the re-run elections when the voting unit exceeds four hundred in number.

The 49 per cent change in results in re-run elections in units of between fifty and one hundred employees departs from the general pattern, *i.e.* the smaller the unit the greater the likelihood of changed results. A close examination of these situations, however, gives reason for this aberration. Thus, whereas only 20 per cent of all elections in this survey were decided originally by a vote margin of less than 5 per cent, over 40 per cent of these particular elections were decided originally by this close margin.

THE ORIGINAL MARGIN OF VICTORY

There is a greater likelihood that the results of the original and re-run elections will differ when the margin of victory (or defeat) in the original election is close. The following chart, limited to 222 "one union" elections,[20] illustrates this.

Original election won by vote margin of between.	Number and per cent of elections won by this margin.	Number and per cent of re-run elections within category where results differ from those in original election.
0-5%	45 (20%)	21 (47%)
6-10%	33 (15%)	13 (39%)
11-20%	59 (27%)	16 (27%)
over 20%	85 (38%)	18 (21%)
Total	222	68 (31%)

The interesting fact is not so much that there is almost an even chance of winning a re-run election when the original election was lost by a close margin, but that there is a better than one to five

[20] The 45 multi-union elections are eliminated from this particular aspect of the study because the "margin of victory" is clouded when the votes are scattered in more than two directions.

chance that a re-run election can be won despite a landslide defeat in the original election. Illustrations of this are: union lost first election, 2 to 22; won re-run election, 12 to 11; union lost first election, 41 to 66; won re-run election, 52 to 48; union lost first election, 9 to 25; won re-run election, 18 to 16.

THE TIME ELEMENT

The time element plays an important role in the likelihood of change in re-run elections. When the re-run elections are held almost immediately, *i.e.* within 30 days of the original elections (17 per cent are so held),[21] or when the re-run election is held after a long delay, *i.e.* nine months (13 per cent are so held), there is only one chance out of five that the results of the original and re-run elections will differ. The greatest change, as illustrated by the following chart, comes when the re-run election is held within the second or third month following the original election.

Time lapse between original and re-run elections.	Number and per cent of elections within this category.	Number and per cent of re-run elections within category where results differ from those in original election.
One month or less.	47 (17%)	11 (21%)
One to two months.	29 (11%)	12 (40%)
Two to three months.	25 (9%)	8 (32%)
Three to six months.	100 (38%)	26 (26%)
Six to nine months.	32 (12%)	10 (31%)
Over nine months.	35 (13%)	7 (22%)
Total	267	74 (31%)

SUMMARY AND CONCLUSIONS

The cases covered in this survey arose in every area of the United States, rural, urban, and suburban. They involved the large shop, the small store, the industrial worker, the hard-bitten teamster, the white-collar clerical, the sophisticated labor-relations counselor, and the guileless plant manager anxious to curry favor. Needless to say, the results of these mass statistics cannot have pertinence to every individual situation in the viable area of personalized labor-manage-

[21] This is possible when the charged party admits the error of his ways and consents to a re-run election.

ment relations. Despite this caveat, however, some generalizations are supported by the findings.

Untold energy and time is expended in examining 10 per cent of the Labor Board elections wherein objections to unfair electioneering practices are made with the consequence that the initial results in one per cent of the elections are set aside. This expenditure of time and energy is justified for two reasons: it affords "full freedom" of the right to self-organization to those immediately concerned; and it deters those not immediately concerned from engaging in like practices. Who can estimate the number of Labor Board election participants who would stoop to unfair electioneering practices but for the knowledge that they could not retain the fruits of the forbidden act?

The major premises of the Labor Board in this area—that a "tainted" election does not reflect the uninhibited will of the employees—is sound. Eighty-five per cent of the elections set aside for unfair electioneering practices are followed by re-run elections, and of these almost a third show results different from the original tallies. When union misconduct is responsible for the re-run election, the change of the results in the successive elections runs as high as 47 per cent.[22]

The relatively small handful of employers who seek to deny the statutory right of self-organization by means of unfair electioneering practices does so through deliberate choice. The most common such practices cannot be inadvertent or unintentional. Threats to close the plant or discharge the employees if they vote for a union; captive audience speeches on company premises within twenty-four hours of the election; office interviews with individuals or small groups where they are threatened with economic reprisal if the union is elected are all clearly premeditated practices. The same knowing deliberateness is found in the unions' use of physical intimidation or publication of misstatements concerning alleged benefits flowing from organization.[23]

Under ideal conditions—when the voting unit is small, the employees skilled, and the re-run election prompt—the Labor Board's

[22] See note 11 *supra.*

[23] This constitutes but a small fraction of union unfair electioneering practices. Most such practices are "technical," *i.e.* display of "marked" sample ballots, electioneering too close to the polls, etc. See the chart in, THE NATURE OF THE ILLEGAL PRACTICE, *supra.*

re-run election remedy is adequate. Under less than ideal conditions the remedy is less satisfactory; and apparently some employer unfair electioneering practices (plant-closing threats, for example) can seldom be dissipated under existing conditions. It is suggested that the Labor Board might well consider the following proposals as a technique for depriving the "guilty" parties of the benefits of their wrongdoing.

First, the Labor Board should neither "force" an early re-run election before the unlawful consequences have dissipated (17 per cent of the re-run elections are held within thirty days of the original election with very little change in results) nor should the Labor Board delay matters until all interest is burned out (13 per cent of all re-run elections are held nine months or more after the original election with very little change in results).[24] The victimized party should be consulted as to the timing of the re-run election, and his desires, if within reasonable limits should be given controlling weight.

Second, the Labor Board might consider special provisions augmenting its order setting aside the results of elections marked by misconduct. For example, the employer who is adjudged to have abused his superior power of communication with an unlawful captive audience speech, a discriminatory "no-solicitation" rule favoring one of two competing unions, personalized office interviews, and the like, might well be required to forego the right which might otherwise be his to deny union organizers access to his plant facilities and the employees who are assembled there. The cases show that size, and the consequent problem of communication, plays an important role in remedying the unfair electioneering practices.

Third, the Labor Board might well enlist the support of the federal courts to prevent the repetition of certain unfair electioneering practices.[25] An employer's threats to close his plant or the union's use of violence may hang over the employees despite a Labor Board order directing a new election. The lingering doubt and the fear that beclouds independent choice, can be removed when a federal

[24] Seven per cent are held more than one year after the initial election.

[25] These unfair electioneering practices are also unfair labor practices and under these circumstances, section 10(j) of the Labor Act authorizes the Labor Board "to petition any district court of the United States . . . for appropriate temporary relief or restraining order." 29 U.S.C. § 160(j), 49 Stat. 1921 (1958).

judge, through an injunction, adds his voice to that of the Labor Board.

The re-run election is a remedy that goes far to both prevent and cure the ills of unfair electioneering practices. More can be done through research, analysis, and the application of new techniques. More must be done if all employees are to exercise their right to "full freedom" of association, of self-organization, and designation of representatives of their own choosing.[26]

[26] As noted in note 1 *supra,* this right originated from Congress in the Wagner Act, and was re-affirmed by the Congresses that enacted the Taft-Hartley and Landrum-Griffin amendments.